



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R4-OAR-2022-0294; FRL-10440-01-R4]

Disapproval of Air Quality Implementation Plans; Georgia; Proposed Revisions to Georgia's Rules for Air Quality Control Pertaining to Startup, Shutdown and Malfunction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to disapprove a State Implementation Plan (SIP) revision submitted by the State of Georgia through the Georgia Environmental Protection Division (GA EPD) on November 17, 2016. The revision was submitted by Georgia in response to a finding of substantial inadequacy and SIP call published on June 12, 2015, for a provision in the Georgia SIP related to excess emissions during startup, shutdown, and malfunction (SSM) events. EPA is proposing to disapprove the SIP revision and to determine that the SIP revision fails to correct the deficiencies identified in the June 12, 2015, SIP call in accordance with the requirements for SIP provisions under the Clean Air Act (CAA or Act).

DATES: Comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R4-OAR-2022-0294 at <https://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from regulations.gov. EPA may publish any comment received to its public docket. Do not electronically submit any information you consider to be Confidential Business Information (CBI) or other information, the disclosure of which is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should

include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

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SUPPLEMENTARY INFORMATION:

I. Background

On February 22, 2013, EPA published in the *Federal Register* a notice of proposed rulemaking that outlined EPA's policy at the time with respect to SIP provisions related to periods of SSM.¹ In that notice, EPA analyzed specific SSM SIP provisions and explained how each one either did or did not comply with the CAA with regard to excess emission events. For each SIP provision that EPA determined to be inconsistent with the CAA, EPA proposed to find that the existing SIP provision was substantially inadequate to meet CAA requirements and thus proposed to issue a SIP call under CAA section 110(k)(5). On September 17, 2014, EPA issued a document supplementing and revising what the Agency had previously proposed on February 22, 2013, in light of a United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) decision² that determined the CAA precludes authority of EPA to create affirmative defense provisions applicable to private civil suits. EPA outlined its updated policy that affirmative defense SIP provisions are not

¹ State Implementation Plans: Response to Petition for Rulemaking; Findings of Substantial Inadequacy; and SIP Calls To Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown, and Malfunction, 78 FR 12460 (February 22, 2013).

² *NRDC v. EPA*, 749 F.3d 1055 (D.C. Cir. 2014).

consistent with CAA requirements. EPA proposed in the supplemental proposal document to apply its revised interpretation of the CAA to specific affirmative defense SIP provisions and proposed SIP calls for those provisions where appropriate. *See* 79 FR 55920 (September 17, 2014).

On June 12, 2015, pursuant to CAA section 110(k)(5), EPA finalized “State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA’s SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls To Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction,” hereinafter referred to as the “2015 SSM SIP Action.” *See* 80 FR 33839 (June 12, 2015). The 2015 SSM SIP Action clarified, restated, and updated EPA’s interpretation that SSM exemption and affirmative defense SIP provisions are inconsistent with CAA requirements. The 2015 SSM SIP Action found that certain SIP provisions in 36 states were substantially inadequate to meet CAA requirements and issued a SIP call to those states to submit SIP revisions to address the inadequacies. EPA established an 18-month deadline by which the affected states had to submit such SIP revisions. States were required to submit corrective revisions to their SIPs in response to the SIP calls by November 22, 2016.

Georgia submitted a SIP revision to EPA on November 17, 2016, in response to the SIP call issued in the 2015 SSM SIP Action. In its submission, the State is requesting that EPA approve two new paragraphs into Ga. Comp. R. & Regs. (hereinafter Rule) 391-3-1-.02(2)(a) of the Georgia SIP that would allow sources to comply with certain work practice standards as alternative emission limitations (AELs) during periods of SSM and would describe requirements for minimizing excess emissions during periods of SSM.

EPA issued a memorandum in October 2020 (2020 Memorandum), which stated that certain provisions governing SSM periods in SIPs could be viewed as consistent with

CAA requirements.³ Importantly, the 2020 Memorandum stated that it “did not alter in any way the determinations made in the 2015 SSM SIP Action that identified specific state SIP provisions that were substantially inadequate to meet the requirements of the Act.”

Accordingly, the 2020 Memorandum had no direct impact on the SIP call issued to Georgia in 2015. The 2020 Memorandum did, however, indicate EPA’s intent at the time to review SIP calls that were issued in the 2015 SSM SIP Action to determine whether EPA should maintain, modify, or withdraw particular SIP calls through future agency actions.

On September 30, 2021, EPA’s Deputy Administrator withdrew the 2020 Memorandum and announced EPA’s return to the policy articulated in the 2015 SSM SIP Action (2021 Memorandum).⁴ As articulated in the 2021 Memorandum, SIP provisions that contain exemptions or affirmative defense provisions are not consistent with CAA requirements and, therefore, generally are not approvable if contained in a SIP submission. This policy approach is intended to ensure that all communities and populations, including minority, low-income, and indigenous populations overburdened by air pollution, receive the full health and environmental protections provided by the CAA.⁵ The 2021 Memorandum also retracted the prior statement from the 2020 Memorandum of EPA’s plans to review and potentially modify or withdraw particular SIP calls. That statement no longer reflects EPA’s intent. EPA intends to implement the principles laid out in the 2015 SSM SIP Action as the Agency acts on SIP submissions, including Georgia’s SIP submittal provided in response to the 2015 SIP call.

Regarding the Georgia SIP, in the 2015 SSM SIP Action, EPA determined that paragraph 7, “Excess Emissions,” of Rule 391-3-1-.02(2)(a) (paragraph 391-3-1-.02(2)(a)7) (hereinafter referred to as paragraph 7), is substantially inadequate to meet CAA requirements.

³ October 9, 2020, memorandum “Inclusion of Provisions Governing Periods of Startup, Shutdown, and Malfunctions in State Implementation Plans,” from Andrew R. Wheeler, Administrator.

⁴ September 30, 2021, memorandum “Withdrawal of the October 9, 2020, Memorandum Addressing Startup, Shutdown, and Malfunctions in State Implementation Plans and Implementation of the Prior Policy,” from Janet McCabe, Deputy Administrator.

⁵ See 80 FR 33985.

See 80 FR 33962. Paragraph 7, which has three parts, provides, first, that excess emissions which occur during periods of SSM despite ordinary diligence by the source are allowed provided that best operational practices to minimize emissions are adhered to, all associated air pollution control equipment is operated in a manner consistent with good air pollution control practice for minimizing emissions, and the duration of excess emissions is minimized. Second, paragraph 7 provides that excess emissions which are caused entirely or in part by poor maintenance, poor operation, or any other equipment or process failure which may reasonably be prevented during periods of SSM are prohibited and are violations of Georgia's Air Quality Control rules. Third, paragraph 7 specifies that the provisions therein apply only to those sources which are not subject to any requirement of 40 CFR part 60, as amended, concerning New Source Performance Standards. The rationale underlying EPA's determination that paragraph 7 of section 391-3-1-.02(2)(a) is substantially inadequate to meet CAA requirements, and therefore to issue a SIP call to Georgia to remedy the provision, is detailed in the 2015 SSM SIP Action and the accompanying proposals. EPA is not soliciting comment on its rationale for issuing the 2015 SIP call to Georgia.

II. Analysis of Georgia's SIP Submission

As noted above, Georgia's November 17, 2016, SIP revision requests that EPA approve two new paragraphs into Rule 391-3-1-.02(2)(a) of the Georgia SIP at 391-3-1-.02(2)(a)11, "Startup and Shutdown Emissions for SIP-Approved Rules" (paragraph 11) and at 391-3-1-.02(2)(a)12, "Malfunction Emissions" (paragraph 12).

A. Rule 391-3-1-.02(2)(a)11, "Startup and Shutdown Emissions for SIP-Approved Rules"

For periods of startup and shutdown, new paragraph 11 would apply in lieu of the existing SIP-called paragraph 7 upon the effective date of EPA's final approval of the rule. Paragraph 11 would require sources to comply with applicable SIP emission limitations and standards by either: 1) complying with the applicable emission limitations and standards at all times, including periods of startup and shutdown, or 2) complying with the applicable emission

limitations and standards during “normal operations” and complying with AELs in the form of certain work practice standards during periods of startup and shutdown. Thus, owners and operators of sources that elect not to comply with the numeric emission limitations during periods of startup and shutdown would be allowed to comply with certain alternative work practice standards.⁶

EPA previously identified several deficiencies in paragraph 11, as outlined in EPA Region 4’s August 1, 2016, and September 30, 2016, comment letters to GA EPD regarding Georgia’s July 1, 2016, and August 31, 2016, prehearing submissions transmitting the State’s proposed response to the 2015 SSM SIP Action for public review.⁷ In this notice of proposed rulemaking (NPRM), EPA proposes to find that paragraph 11, which generally was not changed from the version in the pre-hearing submissions except for renumbering, does not adequately address the 2015 SSM SIP Action and does not comport with EPA’s SSM policy, as outlined in that action.

As submitted, subparagraph (ii)(I)I.B of paragraph 11 provides that, during periods of startup and shutdown, sources subject to any of the SIP emission limitations identified in subparagraph 11.(ii) may choose to comply with “general alternative work practice standards” identified at 11.(ii)(I)IV; work practice standards which are in federal rules as noted at 11.(ii)(I)V; or source-specific work practice standards established in permits at 11.(ii)(I)VI. Subparagraph (ii)(I)IV.B of paragraph 11 provides that sources may choose to comply with generally available work practice standards at provisions (ii)(I)IV.B.(A)–(M), as applicable, for fuel burning sources and pollution control devices installed to meet applicable emission

⁶ New paragraph 391-3-1-.02(2)(a)11 also includes language at paragraph 11.(iii) that would void 391-3-1-.02(2)(a)11.(ii), which provide for compliance options during periods of SSM, if EPA’s 2015 SSM Action is 1) “Declared or adjudged to be invalid or unconstitutional or stayed by the United States Court of Appeals for the Eleventh Circuit, the District of Columbia Circuit, or the United States Supreme Court,” or 2) “Withdrawn, repealed, revoked, or otherwise rendered of no force and effect by the United States Environmental Protection Agency, Congress, or Presidential Executive Order.” EPA notes, however, that Georgia’s SIP submission does not ask EPA to approve this automatic rescission language into the SIP. See the submittal at pages 15/63, 22/63, and 23/63, where Georgia indicates that these provisions are not intended for incorporation into the Georgia SIP.

⁷ EPA’s comment letters are part of Georgia’s complete November 17, 2016, submittal, available in the docket for this proposed action.

limitations, as applicable. The Georgia rules, which would function as AELs to otherwise applicable numeric emission limits in the SIP during periods of startup and shutdown, do not reflect consideration of the seven specific criteria that EPA recommends, per Agency guidance, for developing AELs that apply during startup and shutdown. *See* 80 FR 33980–82.⁸ For example, and as discussed in more detail below, the generally available work practice standards apply to a general type of source, i.e., “fuel burning sources,” and are not limited to specific, narrowly defined source categories (e.g., cogeneration facilities burning natural gas, steam generating units burning fossil fuel, stationary gas turbines, etc.) using specific control strategies.

The Georgia rules also seem to have been developed without consideration of whether sources are capable of complying with otherwise applicable numeric emission limitations. EPA does not recommend establishing AELs for sources that are capable of meeting their existing emission limitations at all times. *See id.* at 33913. As part of the November 17, 2016, SIP revision, GA EPD responded to EPA’s comments on the draft regulatory changes. GA EPD notes in its response that sources that are capable of meeting their numeric emission limitations at all times have the option to comply with those limits at all times in lieu of the additional burden of complying with work practice standards during periods of startup and shutdown. Specifically, paragraph 11 at 11.(ii)(I)I. allows compliance with emission limitations to be achieved by either complying with the applicable emission limitations at all times or by complying with the AELs during periods of startup and shutdown as outlined in the remainder of subparagraph 11(ii). This means that sources which are capable of meeting the original emission limitations and standards at all times, even during periods of startup and shutdown, have the option of complying with AELs such as work practice standards in lieu of meeting those original limitations. Accordingly, EPA views this option as inconsistent with the 2015 SSM SIP Action.

⁸ *See also* EPA’s 1999 SSM Guidance (Memorandum to EPA Regional Administrators, Regions I–X from Steven A. Herman and Robert Perciasepe, USEPA, Subject: State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown, dated September 20, 1999), available as Document ID EPA-HQ-OAR-2012-0322-0007 at <https://www.regulations.gov>.

Moreover, the requirements at 11.(ii)(I)IV.B.(A)–(M) have not been sufficiently tailored for specific sources or source categories. Control requirements that apply during startup and shutdown must be clearly stated as components of the emission limitation and must meet the applicable level of control required for the type of SIP provision (e.g., must be reasonably available control technology (RACT) for sources subject to a RACT requirement). *See* 80 FR 33890, 33912–13. Alternative requirements applicable to a source during startup and shutdown should be narrowly tailored and take into account considerations such as the technological limitations of the specific source category and the control technology that is feasible during startup and shutdown. *See id.* at 33912–13, 33980.

The November 17, 2016, submittal indicates that the State made use of EPA’s work practice standards at 40 CFR part 63, subpart DDDDD, known as the boiler Maximum Achievable Control Technology (MACT) rule (Boiler MACT Rule), and other federal regulations in developing its work practice standards (e.g., the general work practice standard at 11.(ii)(I)IV.B.(H)). EPA acknowledges that certain federal rules may provide useful examples of approaches for appropriate and feasible AELs for states to apply during startup and shutdown in a SIP provision (in particular those federal rules that have been revised or newly promulgated since 2008).⁹ However, it should not be assumed that emission limitation requirements in recent National Emission Standards for Hazardous Air Pollutants (NESHAP) and New Source Performance Standards (NSPS) are appropriate for all sources regulated by the SIP. The universe of sources regulated by the federal NSPS and NESHAP programs is not identical to the universe of sources regulated by states for purposes of the national ambient air quality standards (NAAQS). Moreover, the pollutants regulated under the NESHAP program (i.e., hazardous air pollutants) are in many cases different than those that would be regulated for purposes of attaining and maintaining the NAAQS, protecting prevention of significant deterioration (PSD)

⁹ Specifically, EPA is referring to federal rules for the New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants that have been issued since the D.C. Circuit’s decision of December 19, 2008, *Sierra Club v. Johnson*, 551 F.3d 1019 (D.C. Cir. 2008).

increments, improving visibility, and meeting other CAA requirements. *See* 80 FR 33916.

Therefore, the work practice standards which the State wants to include as components of a continuously applicable emission limitation would need to be evaluated on a case-by-case basis as to their appropriateness as AELs for SIP purposes.

Regarding the example included in GA EPD's response in its November 17, 2016, submittal, the general work practice standard at 11.(ii)(I)IV.B.(H) is available to all fuel burning equipment and requires sources to burn a "clean fuel" as defined in the Boiler MACT Rule or to burn "the cleanest fuel the unit is permitted to burn, as practicable." The submittal does not explain why startup and shutdown work practice standards that were developed for boilers are necessarily appropriate as AELs for all types of fuel-burning sources. This general work practice standard is not sufficiently specific in its applicability, nor is it sufficiently specific as to which fuels are acceptable to burn during startup to be considered an appropriate AEL. *See* 80 FR 33912–13, 33916. Additionally, if certain sources can meet their existing numeric emission limitations and standards, then those sources do not need AELs. In those cases, there should be a distinction between which sources are required to comply with their existing numeric emission limitations or standards and which sources need AELs for periods of startup or shutdown.

Additionally, EPA notes that many of the work practice standards listed in 11.(ii)(I)IV.B. appear to contain exempt periods, presumably due to technological limitations of the control equipment. Some of the standards also require operation "as specified by the manufacturer," which makes these standards difficult or impractical to enforce and may also result in exempt periods. For example, for units using baghouses, no emission limitation would apply whenever "the inlet gas temperature is below the dew point, outside the manufacturer's recommended operating temperature range, or if the pressure differential across the baghouse exceeds the manufacturer's recommended maximum pressure differential." Rule 391-3-1-

.02(2)(a)11.(ii)(I)IV.B.(A). While EPA agrees that emission control devices should be utilized to the maximum extent practicable, the Agency disagrees that sources should be exempt from

any sort of emission limitation during times in which full use of control devices might not be possible. As discussed in the 2015 SSM SIP Action, in accordance with the CAA, some emission limitation must apply at all times. Examples of potential AELs that may be applied include the use of additional emission controls, use of cleaner burning fuels, and establishment of higher numeric emission limitations that are still protective of the NAAQS and otherwise meet the requirements of the CAA. Thus, for the reasons discussed above, EPA is proposing to disapprove the AEL approach established at 11.(ii)(I)IV.

Next, paragraph 11 at 11.(ii)(I)V provides that, in lieu of the general alternative work practice standards option at 11.(ii)(I)IV, the owner or operator of a source may follow the startup and shutdown work practice standards in federal rules included in 40 CFR part 60 (NSPS) or 40 CFR part 63 (NESHAP) so long as the rule contains specific work practice standards for startup and shutdown periods. The provision also notes that those federal rules are adopted by Georgia as Rules 391-3-1-.02(8) and (9). As discussed above, while EPA acknowledges that certain federal rules may provide good examples of approaches for appropriate and feasible AELs for states to apply during startup and shutdown in a SIP provision (in particular, those federal rules that have been revised or newly promulgated since 2008),¹⁰ the SIP must be clear as to what the applicable limitations are for each source at all times. Therefore, this provision does not constitute a component of an emission limitation for a specific source or source category, as it does not specify which sources or source categories will comply with the startup and shutdown procedures contained in federal rules and which provisions from those federal rules are applicable.

As noted above, control requirements that apply during startup and shutdown must be clearly stated as components of the emission limitation and must meet the applicable level of control required for the type of SIP provision. Since the purpose of the NSPS and NESHAP programs is not identical to that of the SIPs, the provisions intended to apply to specific source

¹⁰ See *supra* n.9.

categories should be evaluated on a case-by-case basis to ensure their appropriateness for the purposes of the SIP. *See* 80 FR 33916. EPA also recommends giving consideration to the seven specific criteria delineated in the 2015 SSM SIP Action for developing AELs in SIP provisions that apply during startup and shutdown. *See id.* at 33980. Therefore, EPA is proposing to disapprove the AEL approach established in 11.(ii)(I)V.

Rule 11.(ii)(I)VI provides that in lieu of options 11.(ii)(I)IV or 11.(ii)(I)V discussed above, the owner or operator of a source may choose to comply with a source-specific alternative work practice standard for startup and shutdown periods that has been incorporated into a federally enforceable permit. EPA notes, however, that emission limitations that are specified only in a permit are not part of the SIP unless and until they are submitted to EPA and federally approved into the SIP. The fact that EPA has approved the permitting program itself into the SIP does not mean that EPA has approved the actual contents of each permit issued or has made such contents an approved part of the SIP. *See* 80 FR 33915–16, 33922. In the context of emission limitations contained in a SIP, EPA views the approach of establishing AELs through a permit that does not involve submitting the relevant permit requirements to the EPA for inclusion in the SIP as a form of “director’s discretion,” a type of provision that, as explained in the 2015 SSM SIP Action, is inconsistent with CAA requirements because it would allow the state to create alternatives to SIP emission limitations without complying with the CAA’s SIP revision requirements.

Among other things, a permit-based approach to establishing an AEL (that does not involve submitting the relevant permit requirements to the EPA for inclusion in the SIP) would bypass EPA’s role in reviewing and approving the AEL to ensure that it is enforceable pursuant to CAA section 110(a)(2)(A) (i.e., that emission limitations are sufficiently specific regarding the source’s obligations and include adequate monitoring, recordkeeping, and reporting requirements). Accordingly, a permitting process cannot be used to create alternatives to SIP emission limitations for sources during startup and shutdown in lieu of a SIP revision. The State

may use the permit development process as a means to evaluate and establish AELs for periods of startup and shutdown for a specific source, but such permit conditions would not negate or replace applicable SIP limits without being approved as a source-specific SIP revision.

Georgia's November 17, 2016, submittal suggests that the "director's discretion" issue is not implicated in the approach delineated in 11.(ii)(I)VI because EPA and the public would have an opportunity to comment on the permit. This opportunity for public comment is not a substitute for a source-specific SIP revision, which is needed to alter otherwise applicable SIP emission limitations. As noted above, treating conditions in a permit as AELs that apply instead of SIP-approved emission limitations effectively revises otherwise applicable SIP requirements without going through a SIP revision. Therefore, EPA is proposing to disapprove the AEL approach established in paragraph 11.(ii)(I)VI.

Subparagraph 11.(ii) also states that "[t]he provisions of this subparagraph 11.(ii) shall also apply to emission limitations established in accordance with the new source review requirements in 391-3-1-.02(7)(b) and/or 391-3-1-.03(8) unless startup and shutdown emissions have already been specifically addressed via a federally enforceable permit." Paragraph 11 at 11.(ii)(I)I.B provides that compliance with those emission limitations may be achieved by one of the alternative work practice standards during startup and shutdown. In addition to the other concerns noted previously regarding subparagraph 11.(ii), allowing the alternative compliance options for startup and shutdown to be available for limitations established for a source through the State's new source review (NSR) program may result in emission limitations that do not comply with that program. A fully approvable SIP emission limitation, including periods of startup and shutdown, must meet all substantive requirements of the CAA applicable to such a SIP provision. For purposes of nonattainment NSR (NNSR) and PSD permitting, any AEL applicable to startup and shutdown periods must constitute the lowest achievable emissions rate (LAER) for NNSR or must reflect the use of best available control technology (BACT) for PSD. *See* 80 FR 33893. To satisfy CAA requirements, such AELs must be established on a source-

specific basis through the NNSR and PSD permitting process rather than in a static rule. The process identified in 11.(ii) is also open-ended and not sufficiently specific to determine what applies to specific permitted sources during periods of startup and shutdown.

EPA understands from GA EPD's response to comments in the November 17, 2016, submittal that this provision is specifically intended to apply to sources with existing permits issued pursuant to Rules 391-3-1-.02(7)(b) (PSD) and 391-3-1-.03(8) (NNSR), which did not include emission limitations for periods of startup and shutdown at the time the permits were issued, while permits issued pursuant to the PSD and NNSR program today would consider startup and shutdown in the permitting process. However, the same issues remain with this approach even for the more limited universe of existing permits. Furthermore, for the reasons described previously, EPA is proposing to disapprove the underlying regulations at paragraph 11. Therefore, EPA is also proposing to disapprove this provision at 11.(ii) establishing the AEL "options" approaches for existing PSD and NNSR permits.

B. Rule 391-3-1-.02(2)(a)12, "Malfunction Emissions"

For periods of malfunction, new paragraph 12 would allow compliance with source-specific AELs in the form of work practice standards. Owners and operators of sources that elect not to comply with the numeric emission limitations during periods of malfunction may choose to propose source-specific alternative work practice standards. As with new paragraph 391-3-1-.02(2)(a)11 discussed above, this provision would apply in lieu of the existing SIP-called paragraph 391-3-1-.02(2)(a)7 upon EPA's approval into the SIP, and it also includes automatic rescission language regarding the effectiveness of subparagraph 12.(ii) in the event that legal challenges to the 2015 SSM SIP Action are successful.¹¹

As with new subparagraph 11, EPA identified several deficiencies in new subparagraph 12 previously, as outlined in EPA Region 4's August 1, 2016, and September 30, 2016, comment

¹¹ The rescission language at Rule 391-3-1-.02(2)(a)12.(iii) is not submitted for approval into the SIP in the November 17, 2016, SIP revision. See the submittal at pages 15/63, 22/63, and 23/63.

letters to GA EPD regarding Georgia's July 1, 2016, and August 31, 2016, prehearing submissions transmitting GA EPD's proposed response to the 2015 SSM SIP Action for public review.¹² In this NPRM, EPA proposes to find that paragraph 12, which generally was not changed from the pre-hearing submission except for renumbering, contains deficiencies such that the rule does not adequately address the 2015 SSM SIP Action and does not comport with EPA's SSM policy, as outlined in that action.

The SIP must require sources to comply with applicable emission limitations, which may include AELs approved into the SIP for certain periods of operation. As submitted, subparagraph 12.(ii)(I)II. provides that, during periods of malfunction, sources subject to any of the SIP emission limitations and standards identified in paragraph 12.(i) may choose to comply with a "source specific malfunction work practice standard approved into a federally enforceable air quality operating permit," and this process is outlined further at 12.(ii)(IV). Subparagraph 12.(ii) does not require the AELs to be approved into the SIP, and likewise does not specify that such AELs are not effective for SIP purposes until they are approved by the EPA as part of the SIP. As discussed above in relation to paragraph 11, a permitting process cannot be used to create alternatives to SIP emission limitations unless such alternative limitations are incorporated into the SIP.

EPA further notes that, unlike AELs specific to periods of startup and/or shutdown, it is likely not feasible for the State to develop approvable AELs that apply specifically to malfunctions. As EPA explained in the 2015 SSM SIP Action, a malfunction is unpredictable as to the timing of the start of the malfunction event, its duration, and its exact nature. The effect of a malfunction on emissions is therefore unpredictable and variable, making the development of AELs for malfunctions problematic. There may be rare instances in which certain types of malfunctions at certain types of sources are foreseeable and foreseen and thus are an expected mode of source operation. In such circumstances, EPA believes that sources should be expected

¹² See *supra* n.6.

to meet the otherwise applicable emission limitation to encourage sources to be properly designed, maintained, and operated to prevent or minimize any such malfunctions. To the extent that a given type of malfunction is so foreseeable and foreseen that a state considers it a normal mode of operation that is appropriate for a specifically designed AEL, then such alternative should be developed in accordance with EPA's recommended criteria for AELs. *See* 80 FR 33979. However, should there be a demonstrated need for source-specific AELs for malfunctions, such AELs would not negate otherwise applicable SIP emission limitations unless submitted to EPA and approved into the SIP. For these reasons, EPA is proposing to disapprove the AEL approach for malfunctions established at 12.(ii)(I)II.

Paragraph 12 at 12.(ii)(V) provides that “[m]alfunctions that are not specifically included in an approved source specific work practice, or are the result of poor maintenance, poor operation, or otherwise reasonably preventable control equipment or process failure, are prohibited and shall be considered violations . . . if the malfunction continues for 4 hours or more.” EPA notes that a standard duration for determining whether a malfunction is a violation across the wide array of rules and sources listed in subparagraph 12.(i) does not appropriately consider source-specific requirements, such as the averaging time of applicable emission limitations or the total amount of pollutants released in that time. Thus, EPA believes that the 4-hour period can serve as an improper exempt period for malfunctions in certain circumstances. As discussed above, an emission limitation must apply at all times. Therefore, EPA is proposing to disapprove 12.(ii)(V).

Additionally, subparagraph 12.(i) provides that “[t]his paragraph 12. also applies to emission limitations established in accordance with the new source review requirements in 391-3-1-.02(7)(b) and/or 391-3-1-.03(8) unless malfunction emissions have already been specifically addressed via a federally enforceable permit.” EPA acknowledges that there are not open-ended, generally available work practice standards for malfunctions in paragraph 12 as in 11.(ii)(I)IV.B. for startup and shutdown, and 12.(ii)(IV) requires a permit application and for any sources

without source-specific work practice standards approved in a permit to comply with the applicable emission limitation (i.e., existing BACT or LAER, as issued) during malfunctions. However, EPA also notes that, as discussed above, it may not be feasible to establish AELs that are specifically applicable to malfunctions and that are consistent with EPA's SSM policy. Additionally, because EPA is proposing to disapprove the underlying regulations at paragraph 12, the Agency is likewise proposing to disapprove this provision related to existing PSD and NNSR permits at 12.(i).¹³

C. Summary of EPA's Analysis

For the reasons discussed above, EPA is proposing to disapprove Georgia's November 17, 2016, SIP submission, which would establish options for complying with existing SIP emission limitations and standards or alternatives for periods of SSM. Specifically, during periods of startup and shutdown, the SIP revision would allow sources to either comply with existing numeric emission limitations or elect to comply with AELs generally available, comply with AELs listed in federal rules, or to establish source-specific AELs in permits which are not incorporated in the SIP. Further, the SIP revision would also allow sources, during periods of malfunction, to either comply with existing numeric emission limitations or elect to comply with source-specific AELs established in permits which are not incorporated in the SIP. EPA proposes to find that the State's November 17, 2016, SIP revision is not consistent with CAA requirements and does not adequately address the specific deficiencies EPA identified in the 2015 SSM SIP Action with respect to the Georgia SIP.

III. Proposed Action

Under the CAA, the Administrator is required to approve a SIP submission that complies

¹³ New paragraph 391-3-1-.02(2)(a)13, "Startup, Shutdown, and Malfunction Emissions for Certain Rules" (paragraph 13), would describe requirements for minimizing excess emissions during periods of startup, shutdown and malfunction for rules adopted by Georgia but that are not in the State's SIP. The rule would provide that emissions in excess of an applicable standard resulting from SSM events are allowed under certain conditions if appropriate actions are taken to minimize those emissions. Paragraph 13 is not submitted for EPA approval into the SIP. See the cover letter of the November 16, 2017, SIP submittal, and pages 20/63, 37/63, 41/63, and 43/63 in the submittal, available in the docket for this proposed action.

with the provisions of the CAA and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). EPA is proposing to disapprove Georgia's November 17, 2016, SIP submission requesting approval of new paragraphs 391-3-1-.02(2)(a)11.(i) and (ii) and 391-3-1-.02(2)(a)12.(i) and (ii) into the SIP. EPA is proposing disapproval of the SIP revision because the Agency has preliminarily determined that it is not consistent with the requirements for SIP provisions under the CAA. EPA is further proposing to determine that the SIP revision does not correct the deficiencies identified in the June 12, 2015, SIP call. EPA is not reopening the 2015 SSM SIP Action and is only taking comment on whether this SIP revision is consistent with CAA requirements and whether it addresses the substantial inadequacy in the specific Georgia SIP provision identified in the 2015 SSM SIP Action.

If the Agency finalizes this disapproval, CAA section 110(c) would require EPA to promulgate a federal implementation plan within 24 months of the effective date of the final action unless EPA first approves a SIP revision that corrects the deficiencies identified in Section II of this NPRM within such time.¹⁴

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

The Proposed action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget for review.

B. Paperwork Reduction Act (PRA)

¹⁴ In addition to a requirement for EPA to promulgate a federal implementation plan, a final disapproval would trigger the offset sanction in CAA section 179(b)(2) 18 months after the effective date of a final disapproval, and the highway funding sanction in CAA section 179(b)(1) 24 months after the effective date of a final disapproval. Although the sanctions clock would begin to run from the effective date of a final disapproval, mandatory sanctions under CAA section 179 generally apply only in designated nonattainment areas. This includes areas designated as nonattainment after the effective date of a final disapproval. As discussed in the 2015 SSM SIP Action, EPA will evaluate the geographic scope of potential sanctions at the time it makes a determination that the air agency has failed to make a complete SIP submission in response to the 2015 SIP call, or at the time it disapproves such a SIP submission. The appropriate geographic scope for sanctions may vary depending upon the SIP provisions at issue. *See* 80 FR 33839, 33930. At this time, there are no nonattainment areas in Georgia.

The proposed action does not impose an information collection burden under the PRA because it does not contain any information collection activities.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA (5 U.S.C. 601 *et seq.*). This action merely proposes to disapprove a SIP submission as not meeting the CAA.

D. Unfunded Mandates Reform Act (UMRA)

The proposed action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This proposed action imposes no enforceable duty on any State, local, or tribal governments or the private sector.

E. Executive Order 13132: Federalism

The proposed action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

The proposed action does not have tribal implications as specified in Executive Order 13175. The proposed action does not apply on any Indian reservation land, any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction, or non-reservation areas of Indian country. Thus, Executive Order 13175 does not apply in this action.

G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that EPA has reason to believe may disproportionately affect children, per the definitions of “covered regulatory action” in section 2-202 of the Executive Order. This proposed action is not subject to Executive Order 13045

because it merely proposes to disapprove a SIP submission from Georgia as not meeting the CAA.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution and Use

The proposed action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

This proposed rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

EPA believes the human health or environmental risk address by this proposed action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations. This proposed action merely proposes to disapprove a SIP submission as not meeting the CAA.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: November 21, 2022.

Daniel Blackman,

Regional Administrator,

Region 4.